WP(C) 6212/2002
BEFORE
THE HON'BLE MR JUSTICE RANJAN GOGOI

1. Heard Mr.G.Uzir, learned counsel for the petitioner and Mr.C.Choudhury, learned counsel for the Respondents.

2. An order dated 30.8.2002 imposing the punishment of dismissal from service on the petitioner, following a regular departmental proceeding, has been assailed in the present writ petition.

3. The brief facts relevant to the present adjudication may be noticed at the outset.

The petitioner's father, one late Gopi Nath Keot, was a Watchman in the Food Corporation of India and was posted in North Lakhimpur. He died on 22.9.91. After the death of his father,the petitioner submitted an application dated 31.10.91 seeking appointment on compassionate ground in accordance with the norms and policy governing such appointments in the Food Corporation of India. By an order dated 2.11.92 the petitioner was appointed as a Watchman. The said order of appointment makes it clear that the petitioner was appointed on compassionate ground and that after joining in the post the petitioner was required to submit the documents / certificates /testimonials specified in paragraph- 3 of the appointment order. According to the petitioner, on the basis of his appointment order dated 2.11.92, he joined service on 5.11.92. Thereafter, the petitioner, as required, submitted the necessary certificates and testimonials including a Schedule Caste Certificates issued by the Asom Anusuchit Jati Parishad which was signed by the President of the District Unit (Lakhimpur) on 5.12.83 and counter signed by the Deputy Commissioner on 7.12.83.

4. The petitioner, threafter, continued to render service for almost a decade. On 20.8.2001, he was placed under suspension and thereafter on 1.12.2001 a disciplinary proceeding was initiated against the petitioner on the allegation that the petitioner had committed serious misconduct in not maintaining absolute integrity as he had tempered with his original caste certificate with an ulterior motive. As per the statement of allegations furnished to the petitioner it was specifically alleged that in the caste certificate submitted by the petitioner there were two interpolations i.e. one in his title as 'Keot' and other in his sub caste as 'Malla'

5. The petitioner submitted his reply to the allegations levelled against him on 2.1.2002. In the said reply the petitioner denied the charges and asserted that the overwritings appearing in the caste certificate submitted by him, were made by one Shri B.Das, President of the district unit of the Asom Anusuchit Jati Parishad (Lakhimpur). The petitioner, in his reply, had further submitted that the title 'keot' is also mentioned in his matriculation certificate and that his father also had the same title. Insofar , as the overwriting in the sub caste is concerned the petitioner had contended that the same was made by the author of the certificate.

6. The reply of the petitioner not having been found to be satisfactory the Respondents ordered a regular departmental proceeding to be held against the petitioner. The petitioner participated in the said proceeding, at the conclusion of which the Enquiry Officer had submitted his report holding the charges to be proved. A copy of the said enquiry report was made available to the petitioner who was asked to showcause as to why he should not be dismissed from service. The petitioner submitted his explanations, on consideration of which, by the impugned order dated 30.8.2002, the punishment of dismissal from service has been imposed. Aggrieved, this writ petition has been filed.

7. Shri Uzir, learned counsel for the petitioner does not contest the validity of the departmental proceeding held against the petitioner. Rather, the submission made is with regard to the relevance of the facts alleged to the charge of misconduct levelled and the quantum of the punishment imposed. In this regard, Sri Uzir, has contended that the appointment of the petitioner was made on compassionate ground and not on the basis of the petitioner being a reserved categor

y candidate. In any case, the caste certificate in question was submitted by the petitioner after his appointment. It is, therefore, argued that even if the overwritings in the caste certificate are assumed to be by the petitioner, such overwritings have no relevance to the appointment of the petitioner so as to warrant the extreme punishment of dismissal. Shri Uzir , learned counsel for the petitioner has further submitted that the alleged interpolation in the caste certificate is in respect of the particular sub caste mentioned therein as 'Malla'. Pointing out to the provisions of the Constitution (Scheduled Caste Order, 1950), Shri Uzir has submitted that 'Malla' is not one of sub castes recognized as Scheduled Caste. The alleged interpolation, therefore, even if assumed was not in favour of the petitioner.

8. Contesting the submissions advanced on behalf of the petitioner, Shri Choudhury, learned counsel for the Respondents has contended that the petitioner , at the time of filing of the application for compassionate appointment had also submitted his caste certificate which fact is plainly evident from a reading of the said application enclosed as Annexure-A to the writ petition. Shri Choudhury, learned counsel for the Respondents has further submitted that while it is correct that the appointment of the petitioner was made on compassionate ground and that he had submitted his caste certificate after his appointment , what cannot be overlooked is the conduct of the petitioner in effecting the interpolations in his caste certificate which could bring some advantage to the petitioner in his service career. The said fact proved and established in the enquiry held, according to Shri Choudhury, would be sufficient to warrant imposition of the punishment of dismissal.

9. In the present case, the fact that the petitioner's appointment was made on compassionate ground and not on the strength of his being a member of any reserved category is not in dispute. It is also not in dispute that the allegedly tempered caste certificate was submitted by the petitioner after he had joined in service on 5.11.92. A reading of the caste certificate of the petitioner, in original, as placed before the Court would go to show that though it is alleged that there are two interpolations i.e. in the title and the sub caste, the alleged interpolation with regard to sub caste alone is material. In the caste certificate of the petitioner, his sub caste was initially mentioned as 'Mal' which was subsequently changed as 'Malla'. Neither 'Mal' nor 'Malla' are recognized as Scheduled Castes under the Scheduled Caste Order , 1950. These are the basis facts that must be kept in mind while proceeding with the present adjudication. The Court must also take note of the further fact recorded by the Enquiry Officer that there is no direct evidence to establish that the petitioner was involved in the alleged interpolation and that the only material available is that the certificate in question had all along remained in his custody.

10. The appointment of the petitioner was not on the basis of his caste. The alleged interpolations in the caste certificate are not to the advantage of the petitioner inasmuch as 'Malla' is not a recognized sub caste. There is no direct evidence against the petitioner with regard to the alleged interpolation except that had been in custody of the caste certificate. However, what must also be noticed by the Court is that in the departmental proceeding though the petitioner had taken the stand that the overwritings in his caste certificate were made by the President of the Lakhimpur Unit of the Asom Anusuchit Jati Parishad, the petitioner did not examine the said person or even otherwise could succeed in proving his version of the case. A departmental proceeding, undoubtedly has to be decided on the basis of preponderance of probabilities. As the caste certificate had, all along, remained in the custody of the petitioner it was incumbent on the petitioner to satisfactorily explain the allegation of overwritings therein.

11. Interference with the punishment imposed by an employer after a full-fledged departmental enquiry is a rare power available to the writ Court which must be sparingly exercised. The Apex Court , in a number of recent pronouncements, has also indicated that if the punishment is to be varied the Court must record its reasons.

12. In a situation where there is no direct evidence involving the petition

er with the alleged interpolations and where the alleged interpolations are not to the petitioner's advantage and above all when the appointment itself was not made on the basis of petitioner's caste certificate, the Court is convinced that the aforesaid circumstances are adequate and sufficient for this Court to exercise its rare power of interference with the punishment imposed. However, the fact the petitioner had failed to explain the overwritings in the caste certificate which had remained in his custody all along must also be taken into account by the Court along with the further fact that such unexplained alterations, even if not to the immediate advantage of the petitioner does throw some doubt on the bonafides of the petitioner.

13. I, therefore, allow this writ petition, set aside the impugned order dated 30.8.2002 imposing the punishment of dismissal from service and grant liberty to the Respondents, if they so desire, to impose such lesser punishment on the petitioner as may be considered just and appropriate.

14. The petitioner will be reinstated in service forthwith with all service benefits except back wages. Any further punishment that may be required to be imposed on the petitioner will be decided by the Respondents in accordance with the present directions, particularly, the direction of withholding of back wages, as ordered by the Court itself.

15. The writ petition consequently is allowed to the extent indicated above.